IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 16712 of 2003

For Approval and Signature:

HON'BLE MR.JUSTICE M.S.SHAH
and
HON'BLE MR.JUSTICE A.M.KAPADIA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

GUJARAT PARAFFINS PVT. LTD.

Versus

JOINT SECRETARY TO THE GOVT. OF INDIA

Appearance:

1. Special Civil Application No. 16712 of 2003

MR AR GUPTA for Petitioner No. 1-2

MR DN PATEL for Respondent No. 1-2

CORAM : HON'BLE MR.JUSTICE M.S.SHAH
and
HON'BLE MR.JUSTICE A.M.KAPADIA

Date of decision: 03/02/2004

ORAL JUDGEMENT

(Per : HON'BLE MR.JUSTICE M.S.SHAH)

What is challenged in this petition under Article 226 of the Constitution is the order No.84-115/2002 dated

30.5.2002 passed by the Government of India in the Ministry of Finance, Department of Revenue, rejecting the petitioners' revision application for grant of interest on the rebate claims under Section 11BB of the Excise Act, 1944 ('the Act' for short).

2. The petitioners exported goods and filed applications for rebate of claim between 14.6.2000 to 21.7.2000 for a total amount of Rs.11,12,368/-. By orders passed between 30.8.2000 to 11.10.2000 by the Deputy Commissioner of Central Excise, Rural II Division, Kalol, allowed the rebate claim by way of credit in RG 23A register.

3. Aggrieved by the said orders in so far as the rebate claims were allowed by way of rebate claim credited in the register and not in cash, the petitioners preferred appeal before the Commissioner (Appeals). By order dated 14.12.2001, the Commissioner (Appeals) allowed the claims for rebate in cash and accordingly the petitioners were given the cheque dated 12.2.2002 for Rs.10,48,189/- towards rebate of claim.

4. The petitioners preferred revision applications before the Government of India in so far as the Commissioner (Appeals) did not allow interest on the delayed payment of rebate, i.e., for the period between June 2001 to February 2002. According to the petitioners, the amount of interest worked out to Rs.2,55,458/-

The revisional authority however, by its impugned order dated 30.5.2002 rejected the revision application by giving the following grounds:

"8. In the present case, it is seen from the orders passed by the Original Adjudicating Authority that rebate claims have been duly sanctioned by way of credit in RG-23 A part II. The Commissioner (Appeals) modified this order and allowed payment by cash.

9. In this situation, it cannot be said that rebate claims were rejected by the Deputy Commissioner and subsequently, they were sanctioned by the Commissioner (Appeals). The Deputy Commissioner has sanctioned the rebate claims by way of credit and the Applicant could have utilized the credit so granted for payment

of duty on excisable goods.

10. Hence, there is no force in the argument that there was delay in sanctioning rebate."

Hence the petitioners have approached this Court.

5. Mr. A.R. Gupta, learned advocate for the petitioners, has submitted that the Original Adjudicating Authority i.e. the Deputy Commissioner of Central Excise had sanctioned rebate but instead of directing the payment thereof by cheque, the Deputy Commissioner sanctioned the same by way of credit in the RG 23A Register in which the petitioners had more than sufficient credit. When the proviso to sub-section (2) of section 11B clearly provides for payment of rebate/refund by cheque, the Deputy Commissioner had erred in law and had in fact committed jurisdictional error in not directing the payment of rebate by cheque. The Commissioner (Appeals) appreciated that the petitioners had more than sufficient credit in their RG 23A Register when the Deputy Commissioner allowed the rebate by way of credit in the above Register. The Commissioner, therefore, directed the Deputy Commissioner to allow rebate by cheque. Hence the petitioners were entitled to get interest for the delay in payment by cheque.

The provisions of Section 11BB have been pressed into service. So also strong reliance is placed on the order dated 23.6.1999 of the Government of India in Re: PRG International, 1999 (113) ELT 751.

6. On the other hand, Mr. D.N. Patel, learned Senior Standing Counsel for the Central Government for the respondent authorities, has resisted the petition and supported the order dated 30.5.2002 of the revisional authority. Mr. Patel has relied on the explanation to sub-section (2) of section 11B of the Act and submitted that in any view of the matter the petitioners are not entitled to any interest for the period prior to 14.12.2001 when the Appellate Commissioner allowed the petitioners' claim of rebate in cash/by cheque. Mr. Patel has also relied on the affidavit in reply.

7. Having heard the learned counsel for the parties, we are of the view that the respondent authorities have committed grave error of law in denying interest to the petitioners. There is no dispute about the petitioners' entitlement to rebate. In fact, the rebate claims were paid to the petitioners by cheques dated 12.2.2002.

There is also no dispute about the fact that the Appellate Commissioner by order dated 14.12.2001 held that the petitioners were entitled to rebate in cash, i.e., by cheque and that the petitioners were justified in making the grievance regarding payment of rebate claim by way of credit in the RG 23A register as the petitioners had sufficient amount of credit in the said register.

The only dispute is about the period for which the petitioners are entitled to get interest under the provisions of section 11BB of the Act on the delayed payment of rebate claim.

8. In the facts of the instant case, the order dated 14.12.2001 of the Appellate Commissioner did not allow rebate as such but merely converted the rebate claimed by way of credit in RG 23 A register into payment of rebate in cash. The petitioners' entitlement to rebate was already adjudicated by the Deputy Commissioner of Central Excise by separate orders passed between 30.8.2000 and 11.10.2000. Hence the first adjudication in favour of the petitioners regarding rebate claim was already done by the Deputy Commissioner. All that the Appellate Commissioner did was to give the petitioners' the benefit of rebate in the form of cash.

9. In view of the clear language of sub-section (2) of section 11BB, the petitioners are obviously justified in getting interest for the period commencing from the expiry of three months from the date of making applications for rebate and the orders of the appellate authority referred to in the explanation to sub-section (2) of Section 11BB are those appellate orders which for the first time allow the rebate/refund claim.

10. Since the petitioners had made applications claiming rebate under the proviso to sub-section (2) of Section 11B of the Act on the dates between 14.6.2000 to 21.7.2000, the petitioners are entitled to get interest for the period commencing from the date of expiry of three months from the date of making applications for rebate.

11. We find that the petitioners' claim is also substantiated by the order dated 23.6.1999 of the Central Government in RE: PRG International, 1999 (113) ELT, 751, wherein the facts were similar to the facts in the present case. Since it is a short order, we reproduce the entire order of the Central Government in this judgment:

"These three Revision Applications have been filed by M/s. PRG International (Applicants) against Order-in-Appeal No.125 to ..... Delhi.

2. Briefly stated the facts of the case are that the Asstt. Commissioner sanctioned rebate claim of Rs.98,280/- and Rs.93,202/- being central excise duty paid on the electric fans exported to Dubai through the port of Mumbai, and Rs.11,11,069/- being the Central Excise duty paid on inputs used in the manufacture of their final product. However, the said original authority ordered the applicants to take credit of these duties in their Modvat account register RG 23A Part II maintained for the purpose. The Commissioner (Appeals) allowed the appeal with the direction that the rebate claimed may be paid in cash or by cheque.

3. Shri V.K. Gupta, Advocate was heard on 14.6.1999. He stated that the Department has not paid interest to them in terms of Section 11BB. He sought directions on this and cited the Board's instructions issued in this regard. He stated that his clients are unnecessarily harassed.

4. Govt. after going through the oral and written submissions observes that the only point disputed is with reference to payment of interest for the delayed grant of rebate/refund. Section 11BB of the CEA, 1944 clearly lays down that interest shall have to be paid on any duty ordered to be refunded under Section 11B (2) from the date immediately after the expiry of three months from the date of receipt of such refund application till the date of refund of such duty. CBEC's instructions vide Circular No.398/31/98/CX, dated 2.6.1998 issued from F.No.201/04/98-CX.6 also reiterate the statutory provisions to dispose of the refund applications within 3 months. In view of the position obtaining in these three Revision Applications, Govt. observes that there seems to be written and an unwritten law, the latter holding sway over the former. It is quite intriguing how despite loss occurring to the exchequer accountability is not enforced.

5. In view of the above discussions, Govt.

would allow the three Revision Applications.

6. The concerned Commissioner of Central Excise as the supervisory officer must take suitable action forthwith regarding payment of interest as also enforce accountability with a view to protecting the credibility of the Department.

7. It is ordered accordingly."

The Central Government followed the aforesaid order in its order in Re: BPM Industries Limited 2001 (128) ELT 557.

12. In the memo of the petition, the petitioners have given the amounts of rebate claim being Rs.10,48,189/= and Rs.64,179/- paid to the petitioners by cheque dated 12.2.2002. In the affidavit in reply filed by Mr. Shailesh Kumar, Deputy Commissioner of Central Excise, Kalol Division, Kalol, there is no dispute about the aforesaid amounts nor about the dates on which the petitioners had made the applications for rebate.

13. In view of the above discussion, we allow this petition. The impugned order No.84-115/2002 dated 30.5.2002 of the Government of India, Ministry of Finance, Department of Revenue, is quashed and set aside. The respondents are directed to pay the petitioners interest on the delayed rebate amounts at the rates prescribed in the notifications issued from time to time by the Government of India under Section 11BB of the Central Excise Act, 1944 for the period between the date of expiry of three months from the date of making rebate applications till the date of payment of rebate by cheques dated 12.2.2002.

This calculation shall be made within one month from the date of receipt of the writ of this Court and actual payment of interest shall be made within one month thereafter i.e., within two months from the date of receipt of the writ of this Court.

In case the respondent authorities do not comply with the aforesaid directions within the stipulated time, it would be open to the petitioners to move this Court for claiming interest on the amount of interest which the petitioners are entitled to get under this order.

14. Rule is made absolute to the aforesaid extent with no order as to costs.

Direct service is permitted.

(M.S. Shah, J.)

(A.M. Kapadia, J.)

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